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Public Access and Judicial Emails

Administrative Rule 9

Lilia G. Judson
Indiana Court Times

Are e-mail communications initiated by judges and transmitted through county owned servers and systems subject to public access? Does it make a difference if those communications are “personal” in nature and go through “personal” e-mail accounts? Does the county have authority to “capture” and “archive” judicial e-mail?

These questions were raised by a trial judge whose county IT department was convinced that it had a duty to archive all judicial e-mail under the public access statutes and, if requested, make the e-mails accessible to the public.

The Indiana Access to Public Records law (I.C. 5-14-3 et. seq) provides that courts are a public agency for purposes of the law. IC 5-14-3-2(1)(1). However, the statute further provides that public records that are declared confidential by or under rules adopted by the Supreme Court of Indiana are not subject to public access. IC 5-14-3-4(a)(8).

Although there is a serious constitutional separation of powers argument that could be posed to challenge the inclusion of courts under the jurisdiction of the above statute,¹ the Supreme Court and state judiciary have endeavored to comply with the public access laws and the public policy expressed therein.

Pursuant to the above statute, the Supreme Court promulgated Administrative Rule 9, which deals exclusively

with all court records, whether they are case related or administrative. The rule became effective January 1, 2006.



The rule provides that a “court record” means both case records and administrative records. A.R. 9 (C)(1). A “case record” means “...any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case.” A.R. 9(C)(2). An “administrative record” means “...any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case.” A.R. 9(C)(3).

As an underlying premise, A.R. 9 provides that all records are accessible to the public unless they are specifically excluded. A.R. 9(D)(1). Section (G) of the rule enumerates all of the types of court records that are excluded from public access. This is not to say that the information could never become public. Access to excluded information may be sought under A.R. 9(I) and through discovery in a legal proceeding. Most important for the question at hand is a provision

Supreme Court

Division of State Court Administration
www.in.gov/judiciary



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An Open Invitation to Indiana Local Courts and Clerks: Job Postings on the Indiana Courts Website

We invite all Indiana state courts and court clerks to post job openings on the Indiana Courts Website at www.in.gov/judiciary/jobs. Submitted job openings must include a job title, description of the position, salary range, application instructions, a contact person, and an application deadline. All submissions must be made electronically with the above information in an email or attached to an email in Word or WordPerfect format. Submissions should be sent to Lindsey Borchel, at lborschel@jtac.IN.gov.

Save a Tree and Stay Informed

If you would like to help save a tree and still stay informed, you may receive the Indiana Court Times via email, or you can access our Website, www.in.gov/judiciary/admin (click on publications). To have your name removed from our hardcopy mailing list contact Deborah Guthrie-Jones at dguthrie@courts.state.in.us.

that specifically excludes from public access “(A)ll personal notes and e-mails, and deliberative material, of judges, jurors, court staff and judicial agencies, ...” A.R. 9(G)(1)(h) and (2)(a) (emphasis added).

At first glance, personal e-mails may appear to not be covered within the definition of court records. This apparent exclusion would impliedly exclude them from both the access and confidentiality provisions of the rule. However, by enacting A.R. 9(G)(1)(h) above, the Supreme Court made a very clear statement that the personal notes and e-mails of judges are not subject to public access.

A.R. 9 does not distinguish whether the e-mail (or any court information) resides on a county e-mail account or a private account. Whether the county owns the computer or e-mail account is irrelevant. Under A.R. 9(K), county or local governmental agencies and private vendors that provide information technology services to a court are treated as “vendors” and are required to comply with the provisions of A.R. 9.² Thus, while the county may adopt various policies regarding confidentiality, when it comes to court records, A.R. 9 is the exclusive law.

The legal principle expressed above applies to the questions about “capturing” and “archiving” e-mails. The county IT personnel are subject to the provisions of A.R. 9 and must treat court information in compliance with A.R. 9, pursuant to the courts’ directives. We also direct your attention to Administrative Rule 10, which creates a duty for the judge to be administratively responsible for the integrity of judicial records of the court and ensure that measures and procedures are employed to protect the integrity of the records.

Having said all the above, we must also point out that, as a practical matter, e-mail over the county server is never a good way to communicate confidential or private information. Although judges’ private e-mails are not subject to requests for access by the public, the nature of e-mail is such that true privacy cannot be assured nor expected. Once an e-mail is sent, it is subject to interception, copying and wide dissemination by the recipient. Furthermore, having personal e-mail accounts on the county server may raise other policy issues not related to Admin. R. 9 and public access.

In summary, Administrative Rule 9 excludes personal judicial e-mails from public access. In addition, it imposes significant responsibilities on the county IT staff to adhere to the rule and assure its compliance in respect to court records. However, for practical considerations, it may be unwise to use the county server for personal judicial e-mail accounts.

¹ *Woolley v. Washington Township of Marion County Small*

Claims Court, 804 N.E.2d 761, 765 (Ind. App. 2004). The court noted that based on separation of powers, the legislature, here the county, may not require production of documents, or hypothetically e-mails, dealing with the inner workings or administration of the courts. *Woolley* at 767.

² Admin.R. 9(K) provides:

1. If a court or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section the term “vendor” also includes a state, county or local governmental agency that provides information technology services to a court.
2. Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this rule. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this rule.
3. Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this Rule.
4. Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this rule.
5. These requirements are in addition to those otherwise imposed by law.

Access and Fairness Study

*Gregory J. Donat, Judge
Tippecanoe Superior Court #4*



We live in an era where we are expected to prove the value of every human endeavor with substantiating statistical data and by analyzing its performance, measuring it against accepted standards and instruments of evaluation. It is essential to use a common set of indicators for the performance assessed to have comparative usefulness. The National Center for State Courts has developed a set of ten instruments entitled “CourTools” that judges and court administrators can use to determine how well their judicial system is meeting its mission, goals, and objectives. Number one on the list of these ten CourTools is “Access and Fairness”.

Our 2006 summer intern, C.J. Liu, had expertise in statistical analysis and decided to undertake an access and fairness survey using CourTools (1) for his term project. This instrument contains a ready-to-use survey form that rates customer satisfaction together with demographic information. For a one-week period, Mr. Liu, with the assistance of other Purdue students, distributed surveys by the one public entrance to individuals as they left the courthouse. A reasonable number of people took the approximate 5 minutes to fill out the survey and submit it anonymously. The surveys were then analyzed according to the instructions that are part of the CourTools instruments.



The results of the Tippecanoe County Judicial System were very insightful. For example, the results relating to customer service ranked relatively low. The court website also scored surprisingly low. Confusion caused by using Roman numerals to identify the Superior Courts, and concern about the sharing an entrance with prisoners in jail attire and shackles were two of the more interesting findings. Also, women scored the fairness of the judicial system lower than the men.

In general terms, the survey showed that the public is bewildered and frustrated by the court system. In a single use of the CourTool instrument, we generated several recommendations for improvement. By repeating the project on a regular basis we can measure the impact of our program to improve access to justice. We will be able to make very useful comparisons as to the impact of differing approaches on public perceptions and confidence in their local judicial system if other courts use the identical instrument.

Sign on to the National Center for State Courts web page at www.ncsconline.org for further information, a free set of CourTools, and access to the Tippecanoe County 2006 study.

Proof of Concept Labs put Case Management System to the Test

Cindy Collier
Indiana Court Times

With every large technology project there is the moment of truth when you flip the on switch, log in, and see how the system works under real conditions.

The Indiana Supreme Court's Case Management System is being put through its paces by court and clerks' staff, giving valuable feedback about what works well and adjustments that need to be made as the system is rolled out statewide.

Tyler Technologies' Odyssey case management system was set up in Proof of Concept (POC) labs in May in Monroe County. Marion County's Washington Township POC lab was held at Indiana Supreme Court facilities in Indianapolis. The testing went as expected, and was considered successful.

Staff from six counties have participated in labs so far, said Mary L. DePrez, JTAC Director and Counsel for Trial Court Technology.

"We've been in the field and had people come to our labs to see how Odyssey works. People from Marion, Monroe, St. Joseph, DeKalb and Lake counties have used the system, and we are getting valuable suggestions on everything from local procedures to interfaces," said DePrez.

"This valuable input is helping us identify system gaps we need to address, but we are also seeing users who are ready for a new system and enthusiastic about what it can do," DePrez added.

"Staff using existing systems in the field have a wealth of critical information. Their feedback is letting us fine-tune development of Odyssey to meet their needs. Following the first set of POC labs, JTAC had more than 60 points to follow-up on," DePrez said.

"We want the CMS to work seamlessly to provide courts, clerks and the public with all the information they require. The POC labs confirmed the importance of developing interfaces with key systems around the state, such as the Bureau of Motor Vehicles and the Department of Revenue, and the importance of adding new interfaces down the road," said Lilia G. Judson, Executive Director of State Court Administration.

"For example, in Monroe County Courts there are exiting interfaces with the Bureau of Motor Vehicles to send traffic infractions and the Indiana Department of Revenue for sending Clerk Tax Warrants," said Judson.

"All the information being generated by the Court's new Protection Order Registry and electronic citation system will also interface with the new CMS. We want to ensure that all applications we're creating will feed their information into "Odyssey" because the ultimate goal of the CMS is to have complete court information in one place, accessible to those who need it, when they need it," said Judson.



Rita L. Glenn, St. Joseph County Clerk of Courts

Once POC lab testing is complete, the CMS will be rolled out to five additional counties in 2008, with a phased rollout after that.

The initial contract amount with Tyler for the CMS is \$11 million. Additional payments will be made as milestones are successfully achieved. The entire project is estimated to cost approximately \$70 million which includes staff, training, software and licensing costs.

If you are interested in visiting a POC lab, please contact Mary L. DePrez, Director and Counsel for Trial Court Technology, at mdeprez@jtac.in.gov.

How one Indiana Judge Calculates the Real Cost of Incarceration

Cindy Collier

Indiana Court Times

Indiana law requires a judge who sentences a person to prison to include the cost of incarceration in the defendant's sentencing order. It states, in part: A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order.



The Hon. Frank Newkirk

Sometimes, that number seems eye-popping. Washington Superior Court Judge Frank Newkirk Jr. included the cost of incarceration in sentencing orders as required in IC 35-38-1-5(b), but he knew it wasn't always providing the most accurate dollar figure.

"We are required to determine the cost of incarceration based on the number of days in the sentence. All that requires is using a calendar and a calculator," said Judge Newkirk. "I would look at a number and when it was something like \$300,000, I was shocked."

Upon closer examination, he realized that to have greater accuracy, more factors should be added into the formula. For example, a judge should include an individual's time served in the local jail prior to being transported to the Indiana Department of Correction, as well as any participation in a community transition program or in various related activities. And, he must somehow factor into the formula a credit for anticipated good behavior that automatically reduces the time of actual incarceration.

"If a defendant participates in all these things, the actual cost of incarceration could be a lot lower," said Judge Newkirk. "We didn't have the benefit of seeing that

lower number."

Sandy Saulmon, a Court Reporter in Washington County, was already using software to calculate "out dates." After discussing the issue of incarceration costs with Judge Newkirk, she developed a simple Excel spreadsheet program to determine the estimated cost of incarceration. The program considered activities and factors that could reduce actual time served and the bottom-line for the cost of incarceration.

"We used a system to estimate the out date. We wanted to show both the possible minimum as well as maximum costs of incarceration," said Saulmon. "We wanted the estimates to be pretty easy to calculate, and now it only takes a few seconds."

After the calculations of potential minimum and maximum cost have been made, a range can be included into the sentencing order, for example:

If the defendant serves all his/her remaining sentence at the Indiana Department of Correction without considering the Community Transition Program or Class I goodtime credit, he/she will serve 2434 days. If the cost of incarceration averages \$59.88 per day the total cost will be \$145,747.92. If the defendant serves a period of time in the Washington County Jail before transport to the Indiana Department of Correction, if she participates in the Community Transition Program and if she earns Class 1 good time credit, the cost of incarceration could be less than \$65,097.96.

While the range is not required, Judge Newkirk said it gives a more accurate picture to anyone who would track costs and sentencing.

Judges Receive Boost in Pay

On July 1, 2007, Indiana's judges received a 4% pay increase. This marks the second increase authorized by legislation passed by the General Assembly in 2005. IC 33-38-5-8.1 provides for automatic increases based upon the statewide average percentage increase of executive branch state employees in those years in which the legislature does not provide a pay adjustment.

The increase began showing up in paychecks issued July 25, 2007. Supreme Court Justice's pay increased from \$113,844.44 to \$144,398.22 per year. Court of Appeals Judge's pay is now \$140,367.18 per year, up from \$134,968.44. Circuit, Superior, Probate and County court judges now receive a state paid salary of \$119,893.74 per year, up from \$115,282.44.

Indiana Public Defender Commission Bestows Honors While Announcing Additional Funds

*Deborah Neal, Esq.
Indiana Court Times*

Five people who had shaped Indiana's statewide public defender system from a legislative concept into a breathing program and national role model were honored for their service that spanned a decade and then some at the Indiana Public Defender Commission's quarterly June 27, 2007 meeting.

The Indiana Public Defender Commission recognized these individuals and announced that the Public Defense Fund is receiving an additional \$4.5 million for fiscal year 2007-08, and \$5.25 million for fiscal year 2008-09.

Since 1989, the Commission has recommended standards for indigent defense in capital cases, adopted guidelines in salary and fee schedules for individual county reimbursement eligibility, and reviewed and approved requests for reimbursement in capital cases. In 1993, the responsibility of the eleven-member Commission was expanded to include the adoption of guidelines and standards for county reimbursement eligibility in non-capital cases. Fifty-seven counties now participate in the public defender program and receive over \$14,000,000 from the legislature in county tax relief for their indigent defense costs.

Norman Lefstein, Les Duvall, and Monica Foster were each presented Certificates of Appreciation signed by the Justices of the Indiana Supreme Court. Bettye Lou Jerrel, a Commission member from Evansville, presented a Certificate of Appreciation to Representative Ralph Foley, as a past Commission member, for his years of service. Representative Bob Kuzman, who was unable to attend the June 27th meeting, will also receive a Certificate of Appreciation for his service on the Commission. Mrs. Jerrel thanked Representatives Foley and Kuzman for their assistance in helping the Commission secure the additional funds from the legislature.

Norman Lefstein was a member of the Commission for seventeen years and served as its only chairman since the first meeting in January 1990. Mr. Lefstein was instrumental in improving the quality of criminal defense in Indiana and

continues on a national level as a participant in public defense policy for the American Bar Association.

Monica Foster, also a Commission member since the first meeting in 1990, received a Certificate of Appreciation for her devotion to improving criminal defense for the indigent in Indiana. During her tenure on the Commission, Ms. Foster, a practicing criminal defense attorney, was instrumental in forming the Supreme Court's Rule 24 that set standards for defense of death penalty cases. She has a national reputation as an educator in capital defense and has taught at death penalty defense seminars in several states.



From left to right: Norman Lefstein, Monica Foster, Representative Ralph Foley, and Chief Justice Randall T. Shepard

Les Duvall, a state senator from Indianapolis from 1966-1985, and Chairman of the Indiana Utility Regulatory Commission from 1986-1989, began his service on the Public Defender Commission in 1999. He was one of the early proponents of a state public defender system. For three years Duvall lobbied the Indiana Legislature to convince them of the need for a state administered public defense program before the Commission was formed. In 1999, Governor Frank O'Bannon appointed Les

Duvall to the Public Defender Commission. He promoted and administered the Public Defense Fund that provides tax relief to the counties participating in the program, and to all counties in capital cases.

Representative Foley was appointed by the Indiana Speaker of the House to serve as a member of the Public Defender Commission in 1994. He was a strong advocate in the Indiana House of Representatives, educating other state representatives on the need to fund indigent defense in Indiana. Ralph Foley had been a thirteen-year member of the Public Defender Commission.

Commission member Jerrel spoke of the accomplishments of each recipient during their tenure on the Commission. Chief Justice Randall Shepard also commended each past member for unfailing dedication and service to the Public Defender Commission.

Small Claims Courts Working with JTAC

Cindy Collier
Indiana Court Times

The Indiana Supreme Court's new "Odyssey" Case Management System will connect courts statewide and the information judges will have at their fingertips will enhance the administration of justice and better serve the public. In the process of rolling out Odyssey, the Court is working with local courts to determine local needs and offer assistance.



In some cases, there are courts that had to start at square one when it came to technology.

There are 75,400 cases filed each year in Marion County Small Claim Court. Judge William Fisher serves in Decatur Township, Marion County, and when he first came to the bench, he didn't even have a computer in his office.

Only four computers in the township court could be logged on at one time because of server limitations, so when a citizen wanted to log on to the public access terminal, someone in the office had to sign off and stop work, said Judge Fisher.

JTAC was able to provide the Judge with a computer for his office through its program that offers refurbished models to courts and clerks. And as the CMS is rolled out, the information available through that computer will make his job easier.

"The whole concept of what JTAC is doing is so intriguing," said Judge Fisher. "It's what all courts need. Being a judge is such a great partnership with my colleagues countywide and this kind of opportunity makes it all worthwhile."

Once the CMS is installed, Judge Fisher looks forward to having additional information readily assessable in his court.

He gave several examples of how it will be helpful for him, and all judges, to have immediate access to the information that the "Odyssey" case management system will provide.

"In small claims court, people can sometimes get volatile. It would be very helpful to know if someone already has a judgment against them," he said.

The flow of information to and from state and national law enforcement is also a big plus, said Judge Fisher.

"For example, if there is a warrant out that is something we need to know from state police and national databanks. This way we will be able to pull everything," he said.

JTAC is continuing to field test to see what changes need to be made to Odyssey to meet the needs and requirements of Indiana courts and clerks.

"We are grateful to have strong partnerships with local courts and clerks. We want their input as we roll out the Odyssey system and make site visits across the state to offer training and assistance," said Mary L. DePrez, JTAC Director and Counsel for Trial Court Technology.

If you are interested in learning more about the CMS, please contact Mary L. DePrez, JTAC Director and Counsel for Trial Court Technology, at mdeprez@jtac.in.gov.



The Hon. William Fisher, Judge of Marion County Small Claims Court in Decatur Township.

New Faces Within Indiana Supreme Court Enterprises

We take this opportunity to once again welcome the new employees of our Supreme Court agencies. We wish to introduce them to those readers who have not had the pleasure of meeting them.

Brenda Rodeheffer/Employment Law Services Attorney



Brenda Rodeheffer joined the staff of the Supreme Court Division of State Court Administration as Attorney for Employment Law Services. She will be assisting, training and advising judges in all areas relating to employment law. She is available to organize and provide training to judges and court staff on

sexual harassment and other important employment issues, to advise judges regarding new developments in employment law, to help develop employment manuals and policies, and to provide legal advice to individual judges faced with specific challenges.

Brenda worked for many years in the Office of Attorney General and then in private practice. For the last fourteen years, she was a partner with Monday Rodeheffer Jones & Albright. During that time, she also served as an employment arbitrator for the American Arbitration Association and as an Administrative Law Judge for the State. Her scope of practice emphasized employment law and included state and federal litigation, drafting of employment manuals, and advice on a wide variety of employment issues. She is a graduate of Indiana University Bloomington and Indiana University School of Law at Indianapolis.

Brenda replaces Linda L. Loepker who recently transferred to the Board of Law Examiners where she assumed the position of Executive Director, effective September 1, 2007.

Angie James/ Court Analyst



Angie James started with the Division of State Court Administration in October of 2006 as an administrative assistant. In July of this year, Angie was promoted to Court Analyst, one of two analysts in the Division.

Angie spent 13 years in the Legis-

lature as Legislative Assistant to three State Senators. She then moved to the Department of Natural Resources as the Assistant to the Director and Office Manager for three years. After that, Angie began a seven-year career with the Hoosier Lottery in the Sales Department serving as liaison between the lottery and their vendor for the 1400 vending machines throughout the state. Angie was also responsible for the department budgeting process.

James Diller/Court Analyst

Jim Diller joined the staff of the Supreme Court Division of State Court Administration as a Court Analyst. He will be advising courts in the areas of weighted caseloads and caseload allocation plans. Jim will also be helping prepare the yearly Judicial Service Reports and completing other statistical analysis projects for the Division.



Mr. Diller came to the Division of State Court Administration after having been a Research Analyst for the Marion County Justice Agency. Prior to his employment with the Justice Agency, Jim had worked for two different courts. He was the Chief Probation Officer for Shelby County, and had been a Probation Supervisor and Probation Staff Trainer for the Marion Superior Court, Juvenile Division. James graduated from Ball State University in 1993 and received his Master of Public Affairs from Indiana University in 2004.

Mary Wilson/ Quality Assurance Manager

Mary Wilson is JTAC's Quality Assurance Manager. Her duties include management of the Case Management System Testing and Deployment Teams. She joined JTAC in early June after many years at the Indiana Bureau of Motor Vehicles in various positions the most recent of which was as an IT Project Manager.



Marci Scott/Court Reporter Subject Matter Expert and Field Trainer



Marci Scott is a Court Reporter Subject Matter Expert and Field Trainer working on the Case Management System and Protection Order Registry. She provides field training on various JTAC systems. She was a Court Reporter for the past eight years in Shelby Circuit Court and also operated a deposition business.

James R. Walker/Director of Trial Court Management

Jim Walker, a Terre Haute lawyer, has joined the staff of the Supreme Court Division of State Court Administration as Director of Trial Court Management. He is a talented and accomplished attorney and judge with extensive background in criminal law and procedure. Walker is adept at conducting hearings, presiding over jury trials, and adjudicating contested cases in bench trials. He also has



experience in prosecuting criminal cases. Jim has proven and well-developed supervisory and organizational abilities and has exhibited his ability to establish new courts and organize jury trial schedules.

Mr. Walker spent 22 years as a Chief Deputy Prosecutor in Vigo County and served a brief term as a trial judge in Vigo Superior Court, Division 6 after his appointment by Governor Daniels to the newly-created court. He comes to us very highly recommended by a number of the judges in Vigo County. In his career he has demonstrated a significant amount of technological savvy and insight into systems analysis. James received his undergraduate degree, a Bachelor of Arts in Political Science, from Indiana State University, and his law degree from Indiana University School of Law, Bloomington.

“We are very pleased to have these excellent people join our staff at State Court Administration. It is wonderful to have such an experienced group of individuals here to help Indiana’s trial judges, and our own office, with matters that directly impact the administration and operation of our courts,” said Lilia G. Judson, executive director of State Court Administration.

Linda L. Loepker/Executive Director Indiana Supreme Court Board of Law Examiners

Linda Loepker filled the vacancy created by the retirement of Mary Place Godsey as the long-time Executive Director of the Indiana Supreme Court Board of Law Examiners. She left her position this past spring with the Division of State Court Administration to become the Deputy Executive Director of BLE. Linda served from 1995 until March 2007 as a staff attorney and then Director of Employment Law Services for the Division of State Court Administration. Prior to joining STAD she was a staff attorney for The DeMars Corporation in Indianapolis

and served as an assistant corporation counsel for the city of Indianapolis. She was in private law practice before joining the city legal staff.

Ms. Loepker received her undergraduate degree in Criminal Justice from Valparaiso University and her law degree from the Thomas M. Cooley School of Law in Lansing, Michigan.



“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”

Former US Supreme Court Justice Sandra Day O’Connor

Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

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Indiana Court Times

Indiana Supreme Court

Division of State Court Administration

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